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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,495	07/16/2003	Robert F. Rioux	10123/00501	9066

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Patrick J. Fay, Esq.  
FAY KAPLUN & MARCIN, LLP  
Suite 702  
150 Broadway  
New York, NY 10038

EXAMINER

AHMED, AAMER S

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/620,495

Applicant(s)

RIOUX ET AL.

Examiner

Aamer S. Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7, 8, 10-15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman (US 2002/0165520 A1) in view of Winkler et al (US Patent Number 6,413,204 B1) and further in view of Houser (US Patent Number 6,632,196 B1).

Forman al discloses a radiation delivery device comprising an insertion member (10) having a distal end (16) and a proximal end (14) and a lumen extending between the proximal and distal ends, (see figure 4); and a radiation therapy inflatable balloon member (18) deployable from the distal end of the insertion member, an inner chamber of the inflatable member being fluidly coupled to the lumen to receive an inflation fluid therefrom (see figure 4) so that when the inflation fluid is supplied to the inflatable member, and wherein the insertion member is a

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balloon catheter which is insertable through the insertion member in a deflated configuration and further comprising a luer (24) at the proximal end adapted to introduce inflation fluid to the inflatable portion via the lumen, a the inflatable member having a retention layer formed on the outer surface to retain a therapeutic agent and dispense the agent at a selected rate, wherein the layer is a polymeric coating (paragraph 21);

Forman fails to disclose that the inflatable member expands to a substantially spherical shape.

Winkler et al ('204) discloses a similar device wherein the inflatable member expands to a substantially spherical shape (col. 3 line 57); and wherein the apparatus expandable portion is sized to fill a lumpectomy cavity (col. 7 line 34).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Forman by adding the spherical shape of the balloon as taught by Winkler et al, in order to better introduce the site with a therapeutic agent.

Forman in view of Winkler et al ('204) fail to explicitly disclose that the insertion member have an outer diameter of approximately 5 FR. Examiner interprets the conversion of 1 FR to be equal to 1/3 mm. Accordingly, 5 FR it equal to 1.7 mm.

Houser discloses a similar apparatus in which the outer diameter of the insertion member is approximately 5 FR (col. 4 line 35).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Forman in view Winkler et al ('204) by making the outside diameter of the balloon 5 FR as taught by Houser, in order to fit the desired diameter of the cavity.

Claims 8, 18, and 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forman in view of Winkler et al ('204) in view or Houser as applied to claim 1 above, and further in view of Winkler (US Patent Number 6,537,194).

Forman in view of Winkler et al ('204) and in view of Houser disclose the apparatus above, but fail to disclose that the therapeutic agent is paclitaxel or that the balloon is adapted to receive a radioactive seed through the catheter.

Winkler ('194) discloses a similar device wherein the therapeutic agent is paclitaxel (see col. 6) and that the balloon is adapted to receive a radioactive seed through the catheter (col. 11 line 24).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Forman in view of Winkler et al ('204) and in view of Houser, by adding the paclitaxel therapeutic agent and the balloon is adapted to receive a radioactive seed through the catheter as taught by Winkler ('194) in order to describe a common chemotherapeutic agent.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman in view of Winkler et al ('204) and in view or Houser as applied to claim 1 above, and further in view of Williams (U.S. Patent Number 6,083,148).

Winkler et al ('204) and Houser disclose the apparatus above, including an inner inflation chamber and an outer therapeutic chamber and wherein the inflation fluid chamber and the

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therapeutic chamber are sealed from one another (col. 4 line 4), but fails to disclose that the inflatable member comprises a plurality of perforations on the outer surface.

Williams discloses a similar device with perforations (col. 5 line 47).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Forman in view of Winkler et al ('204) and in view of Houser, by adding the perforations of the type taught by Williams in order to better release the therapeutic agent to the site.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-5, 7-8, and 10-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aamer S. Ahmed whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A. Ahmed



NICHOLAS D. LUCCHESI  
SUPERVISOR  
TECHNICAL CENTER OF